



Parkes Shire Council
ABN 96 299 629 630
Council

North Mining Limited
ACN 000 081 434
Developer

Planning Agreement

Environmental Planning and Assessment Act 1979

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Contact
Sydney
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S:13640007



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THIS PLANNING AGREEMENT is dated 28th October 2013

PARTIES:

PARKES SHIRE COUNCIL (ABN 96 299 629 630) of 2 Cecile Street, Parkes NSW 2870
(Council)

NORTH MINING LIMITED (ACN 000 081 434) of PO Box 995, Parkes NSW 2870
(Developer)

INTRODUCTION:

- A** The Developer undertakes copper and gold mining operations at the Northparkes copper mine.
- B** The Developer has lodged the Project Application.
- C** The Developer has offered to enter into this deed with the Council to secure the Development Contribution in relation to the Project Application.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Annual Contribution Amount means the amount of \$100,000 (as adjusted in accordance with Schedule 3) to be paid by the Developer annually in accordance with Schedule 3.

Annual Road Maintenance Contribution means the amount of \$65,000 (as adjusted in accordance with Schedule 3) to be paid by the Developer annually in accordance with Schedule 3.

Base CPI means the CPI number for the quarter ending 31 March 2015.

Base RCI means the RCI number for the quarter ending 31 December 2015.

Bogan Road means the public road known as Bogan Road from the intersection with McClintocks Lane, to the intersection with the Newell Highway as shown on the Plan.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the parties agree on.

CPI Adjustment Date means 1 July 2015 and each anniversary of 1 July 2015 thereafter.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

Current RCI means the RCI number for the quarter ending immediately before 31 December in the relevant adjustment year.

Development means the carrying out of the development described in the Project Application, including the continued operation of the existing Northparkes copper and gold mine, additional underground and open cut mining, amendments and additions to existing waste facilities and an extension of life of that mine.

Development Application has the same meaning as in the Act.

Development Contribution means the:

- (a) Annual Contribution Amount;
- (b) Annual Road Maintenance Contribution;
- (c) Intersection Upgrade Works; and
- (d) Road Upgrade Contribution,

to be provided by the Developer in accordance with Schedule 3.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intersection Upgrade Works means works as agreed with Council for a new seagull intersection in Bogan Road at McClintocks Lane designed to Austroads standards, incorporating:

- (a) a left turn deceleration lane in the southern approach of Bogan Road;

- (b) a right turn bay in the northern approach of Bogan Road;
- (c) a right turn acceleration lane for the right turn out of McClintocks Lane together with a southbound through lane; and
- (d) appropriate widening of McClintocks Lane in the approach and departure to accommodate left turn vehicles.

Land means all of the land that the Project Application applies to.

McClintocks Lane means all of the public road known as McClintocks Lane from the mine site entrance proposed under the Project Application, to and including the intersection with Bogan Road as shown on the Plan.

Mine Haul Road means:

- (a) McClintocks Lane; and
- (b) that part of Bogan Road from the intersection with McClintocks Lane to the Goonumbla Siding turnoff,

as shown on the Plan.

Plan means the plan attached to this deed at Schedule 4.

Project Application means project application number 11_0060 lodged with the Director-General of the Department of Planning and Infrastructure.

RCI means the Road Cost Index published by Transport for NSW, or if that index no longer exists, any similar index which the parties agree on.

RCI Adjustment Date means 1 July 2015 and each anniversary of 1 July 2015 thereafter.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Road Upgrade Contribution means an amount to be paid by the Developer that is equivalent to 80% of the costs as calculated in accordance with Schedule 3 for:

- (a) resealing of Bogan Road and McClintocks Lane to Austroads standards on a 12 year cycle based on a maximum of 2km of resealing in any year; and
- (b) the reconstruction of the Mine Haul Road to Austroads standards based on a maximum of 2km of reconstruction in any year.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them severally and an obligation or warranty in favour of 2 or more persons benefits them severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;

- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

This deed will commence from the date that is the later of the date that:

- (a) this deed is signed by all the parties; and
- (b) the Project Application is approved by the Minister for Planning and Infrastructure.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to the Development and to the Land.

3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4 DEVELOPMENT CONTRIBUTION

The Developer undertakes to provide to the Council, the Development Contribution in accordance with the provisions of Schedule 3 to this deed.

5 ENFORCEMENT – REGISTRATION OF THIS DEED

5.1 Registration of deed

Within 30 Business Days of this deed coming into operation under clause 2.1, the Developer at its own expense will take all practical steps and otherwise do anything to procure:

- (a) the consent of each person who:
 - (i) has an estate or interest in Lot 41 DP 1120299 registered under the Real Property Act; or
 - (ii) is seized or possessed of an estate or interest in the Land; and
- (b) the execution of any documents; and
- (c) the production of the relevant certificates of title; and
- (d) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register for Lot 41 DP 1120299, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

5.2 Evidence of registration

The Developer will provide the Council with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

5.3 Release and discharge of deed

The Council agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to Lot 41 DP 1120299 upon the Developer satisfying all of its obligations under this deed in respect of that land.

5.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 5.1(a) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 5.

6 DISPUTE RESOLUTION

6.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.

6.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

6.3 Attempt to resolve

On receipt of notice under clause 6.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

6.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 6.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance any mediation rules as agreed between the parties. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

6.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 6.2 then any party which has complied with the provisions of this clause 6 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

6.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 6 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 6 for any purpose other than in an attempt to settle the dispute.

6.7 No prejudice

This clause 6 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

7 GST

7.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

7.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

7.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

7.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 7.

7.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Council as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Council, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Council.

7.6 Non monetary consideration

Clause 7.5 applies to non-monetary consideration.

7.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 7.5 the Developer will assume the Council is not entitled to any input tax credit.

7.8 No merger

This clause will not merge on completion or termination of this deed.

8 CAPACITY

8.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

8.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

9 GENERAL PROVISIONS

9.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

9.2 Variation

This deed must not be varied except by a later written document executed by all parties.

9.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

9.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

9.5 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

9.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

9.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

9.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

9.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

9.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

9.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

9.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

9.13 No fetter

Nothing in this deed shall be construed as requiring the Council to do anything that would cause the Council to breach any of the Council's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Council's in exercising any of the Council's statutory functions, powers, authorities or duties.

9.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

9.15 Expenses and Taxes

- (a) Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).

9.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or

- (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application or Project Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 3
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(5))	Not applicable
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 6
Enforcement of this deed – (section 93F(3)(g))	See clause 5
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 9.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

SCHEDULE 2

Address for Service (clause 1.1)

Council

Contact: General Manager

Address: 2 Cecile Street, Parkes NSW 2870

Facsimile No: 02 6862 3946

Developer

Contact: Manager - Community and External Affairs

Address: PO Box 995, Parkes NSW 2870

Facsimile No: 02 6861 3111

SCHEDULE 3

Development Contributions (clause 4)

1 Development Contributions

The Developer undertakes to make the following Development Contributions:

Development Contribution	Timing
Annual Contribution Amount - Cash contribution for diversification planning	In accordance with the requirements of clause 2 of this Schedule.
Annual Road Maintenance Contribution – Cash contribution for the ongoing maintenance of roads in the used by mine traffic	In accordance with the requirements of clause 3 of this Schedule.
Intersection Upgrade Works – works in kind for upgraded mine access and safety	In accordance with the requirements of clause 4 of this Schedule.
Road Upgrade Contribution – Cash contribution towards the costs of road upgrade works	In accordance with the requirements of clause 5 of this Schedule.

2 Calculation of the value of the Annual Contribution Amount

- (a) The Annual Contribution Amount is to be paid commencing on 1 July 2014 and on each anniversary of that date until the year that any approval for the Project Application expires.
- (b) On each CPI Adjustment Date, the value of the Annual Contribution Amount in clause 2(a) of this Schedule will be adjusted by multiplying the Annual Contribution Amount by an amount equal to the Current CPI divided by the Base CPI.

3 Annual Road Maintenance Contribution

- (a) The Annual Road Maintenance Contribution is to be paid on 1 July each year commencing on 1 July 2014 until the year that any approval for the Project Application expires.
- (b) On each RCI Adjustment Date, the value of the Annual Road Maintenance Contribution in clause 3(a) of this Schedule will be adjusted by multiplying the Annual Road Maintenance Contribution by an amount equal to the Current RCI divided by the Base RCI.

4 Intersection Upgrade Works

The Developer must provide the Intersection Upgrade Works prior to the commencement of the use of McClintocks Lane for hauling purposes and otherwise in accordance with any approval granted in respect of the Project Application.

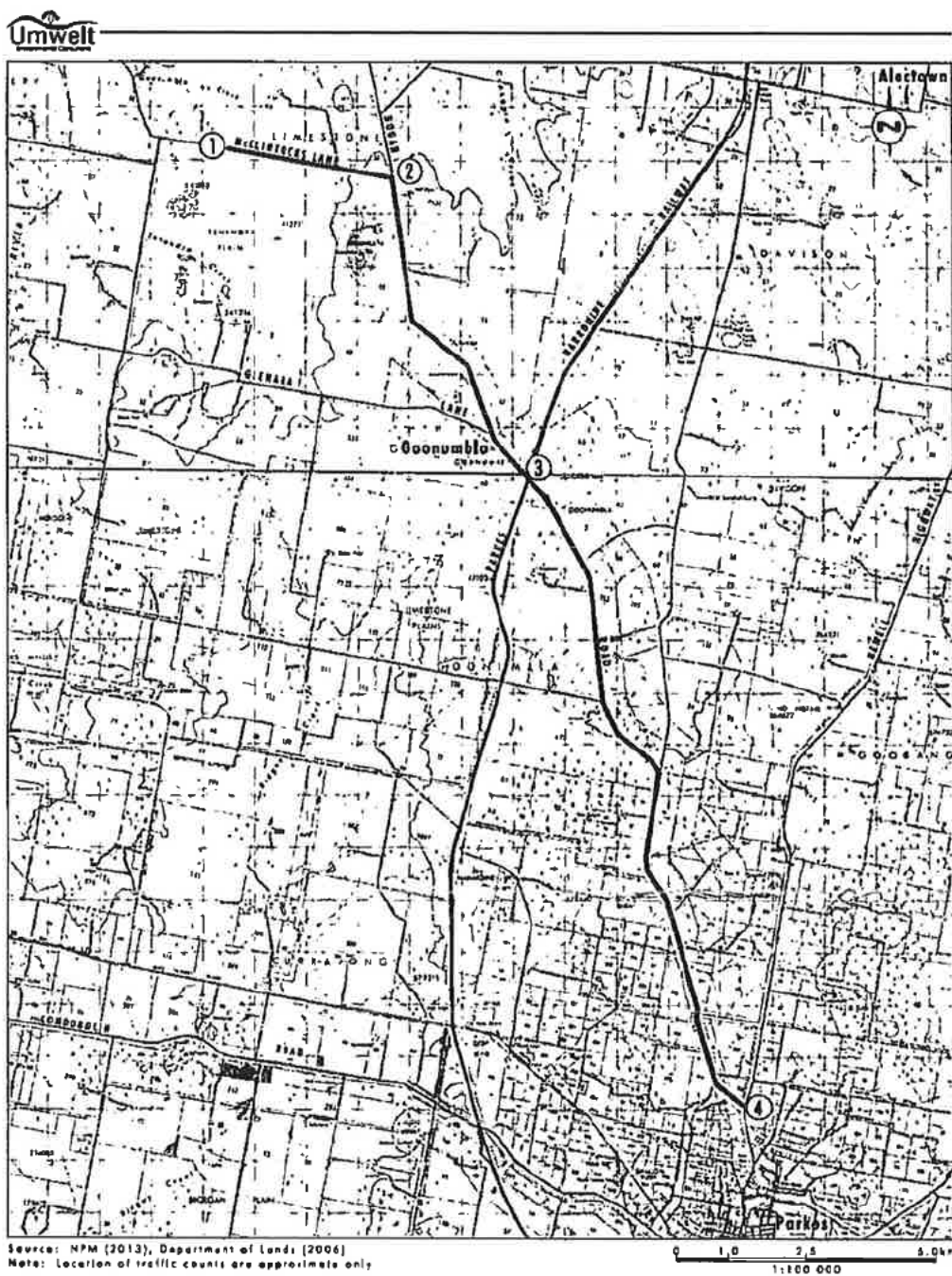
5 Road Upgrade Contribution

- (a) The parties acknowledge and agree that the intention of the Road Upgrade Contribution is:
 - (i) to ensure that the Developer makes an agreed percentage contribution to the costs of the ongoing major reconstruction of the relevant public roads used for the purpose of the mine;
 - (ii) to ensure that the condition of the relevant public roads is satisfactory having regard to the relevant standards during the life of the mine, and also at the end of the life of the mine; and
 - (iii) to allow the required works to be undertaken on an as needs basis during the life of the mine.
- (b) In relation to the reconstruction of the Mine Haul Road, the scope of works is to be based on:
 - (i) an 'as needs' basis if there is a risk of imminent structural failure with respect to any part of the relevant public roads; and
 - (ii) a 5 year structural road assessment that is to be jointly funded in equal shares by the parties.
- (c) On each occasion that Council requires the Road Upgrade Contribution to be paid by the Developer, Council will to provide the Developer with a cost report prepared by a quantity surveyor ("Cost Report") that sets out how the Road Upgrade Contribution has been calculated. The Cost Report must identify any assumptions made by the quantity surveyor and may be in relation to one or more elements of the works that comprise the Road Upgrade Contribution.
- (d) The Developer is to notify the Council in writing within 20 Business Days if it accepts ("Acceptance Letter") or rejects ("Rejection Letter") the Cost Report.
- (e) The Developer must pay the Road Upgrade Contribution to the Council within 30 Business Days of the date of the Acceptance Letter.
- (f) A Rejection Letter is to:
 - (i) state the reasons why the Cost Report is not accepted; and
 - (ii) attach a cost report prepared by a quantity surveyor.
- (g) Within 10 Business Days of receiving a Rejection Letter, the parties are to meet with a view to agreeing on the Road Upgrade Contribution.

- (h) If the parties agree on the Road Upgrade Contribution after meeting under clause 5(f) of this Schedule, the parties are to document that agreement by the Council sending a letter to the Developer. The Developer must pay the Road Upgrade Contribution to the Council within 30 Business Days of receiving that letter from the Council.
- (i) If the parties cannot agree on the Road Upgrade Contribution after meeting under clause 5(f) of this Schedule, the parties agree to resolve the matter through the dispute resolution process under clause 6 of this deed.

SCHEDULE 4

Plan (clause 1.1)



Legend

- ① Proposed Mine Site Entrance
- ② Intersection of McClintocks Lane and Bogan Road
- ③ Goonumbla Siding
- ④ Mine Road Road
- ⑤ Intersection of Bogan Road and Newell Highway
- ⑥ Bogan Road

File Name: (A4): 2949_217.dgn
 20130606 11:29

VPA Plan

EXECUTED as a deed.

EXECUTED by PARKES SHIRE COUNCIL)
(ABN 96 299 629 630):)
)



Signature of witness

Andrew Johns
Name of witness



Signature of authorised person

Kent Boyd
Name of authorised person

EXECUTED by NORTH MINING LIMITED)
(ACN 000 081 434) in accordance with)
section 127 of the Corporations Act:)



Signature of Director

Stefanie Loader
Name of Director



Signature of ~~Director~~/Secretary

Shara Louise Reid
Name of ~~Director~~/Secretary